company has the knowledge, when the proper officer has the knowledge, and if with such knowledge it leads the insured to rely on his valid policy, notwithstanding the breach of condition of which it knows, it will not be heard to allege such breach against a claim of subsequent loss, occurring at a time when, from the conduct of the company, the insured had every right to believe that his property was protected by the policy." Inasmuch as this citation is from a case involving only the question of the effect of the stipulation requiring, a written waiver, its use to support a rule of law on the first point introduces confusion. However, the court in the Belden case ultimately rests its decision upon the conduct of the company and not of its agent, remarking, "Though notice to the insured that an agent has no power to waive conditions must have its effect as prima facie binding on the insured, yet if it appears that the insurers have customarily permitted the agent to waive and have ratified his conduct, there seems to be no reason to doubt that this will amount to a waiver of the limitation upon the power of the agent." The theory of the decision as a whole seems, therefore, to be sound.

The case also affirms that a general agent need not be one having the power to issue policies, but whether this phase of the decision rests upon Section 616 of the Political Code providing that the principal agent of the company in the state when registered as such under the provisions of the section "shall be deemed in law a general agent," or upon the mere fact that he was denominated and held out by the company as its general agent in business dealings, is not made clear.

M. K. W

Mining and Water Law: Pollution of Water by Mining Operations: Injunction.—The injurious effect of mining and reduction operations on the agricultural industry in the vicinity, particularly the "smoke nuisance" resulting from copper smelting, has assumed serious importance in recent years. The federal courts have had occasion to pass on this situation several times[1] and though there is not an entire harmony of opinion and certain of the cases show a tendency to "balance the injury" as between the parties, the weight of authority seems to support the doctrine that while great interests should not be overthrown on trifling or frivolous grounds "every substantial, material right of person or property is entitled to protection."

This smelter "smoke nuisance" question has not yet been determined by the Supreme Court of the United States, but a recent case

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[1] Mountain Copper Co. v. United States, (1906) 142 Fed. 625; American Smelting Co. v. Godfrey, (1907) 158 Fed. 225; McCarthy v. Bunker Hill & Sullivan Min. Co., (1908) 164 Fed. 927; Bliss v. Anaconda Copper M. Co. (1909) 167 Fed. 342, on appeal 186 Fed. 789; see also Hurlbert v. California Cement Co., (1911) 161 Cal. 239.

by that court announces certain important principles which arose out of a somewhat analogous state of facts.[2] The tailings and waste material from the reduction works of a copper company in Arizona were discharged into a tributary of the Gila river which resulted in their being deposited many miles below on the riparian land of an agricultural owner who used the river water for irrigation, and who suffered serious injury as a result of this pollution of the water. The court held that the mere fact that a statute of Arizona gave the right to use water for mining purposes did not justify an invasion of private property rights of the agricultural proprietor below and he had a clear right to apply for preventive relief. The court also held that even though this great mining industry, employing several thousand men and representing an investment of several million dollars might be, relatively, more important than the use agriculturalists made of the water, "the right of the lesser interest is not thereby subordinated to the greater," though "that is sometimes a consideration when a plaintiff seeks relief by injunction rather than by an action at law."

W. E. C.

Mining Law: Extralateral Right: Apex.—An interesting case illustrating the complex nature of some of the extralateral right questions that are presented to the courts for determination has recently been decided by the Supreme Court of Idaho.[1] The accompanying diagram is necessary for a complete understanding of the situation.

The apex AB of the vein in question crossed the south side line of the Senator Stewart Fraction claim at about right angles and extended across this claim to within about 100 feet of the north side line where the vein was completely cut off and terminated on its onward course or strike by what is known as the "Osborne fault," BC. This fault, which was of great extent, had the effect of deflecting the strike of the vein from its normal direction for a short distance in the vicinity of the fault. The fault dipped southwesterly and under cut the vein so that if the country rock to the north of the fault were eroded away it would have left the end edge of the vein, where it intersected the fault, standing out like an overhanging cliff. The owner of the Senator Stewart Fraction claimed that this end edge of the vein abutting against the fault was a part of the apex of the vein even though the place where this edge intersected the easterly end line of the claim producted downward vertically was on the true dip of the vein and quite a distance below the surface. In other words, the contention was made that the apex of the vein in the Senator Stewart Fraction claim was along the line AB as indicated on the diagram and that when the

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[2] Arizona Copper Co. v. Gillespie, (June 16, 1913) 33 Sup. Ct. Rep. 1004.

[1] Stewart Mining Co. v. Ontario Mining Co., (July 7, 1913) (Idaho) 132 Pac. 787